IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1548 of 2005

The Narsinnghrao Shivaji Dharmaji
Industrial Home for the Blind .. Petitioner

versus

Suresh Dattatray Kulkarni & ors. .. Respondents

...

Mr.R.M. Nakhwa i/w Mr.V.B. Dhawan for the petitioner.
Mr.P.K. Dhakephalkar a/w A.A. Kocharekar for respondent no.1.
Mr.P.V.Dhopatkar AGP for respondent nos.2 and 3.

CORAM : D.G. KARNIK, J

DATED : 3rd July 2006.

P.C.:

1. This Writ Petition is directed against the order dated 30th April 2005 passed by the Divisional Welfare Officer, Mumbai in an appeal against the order of the petitioner dated 12th June 1999, terminating

services of the respondent.

2. The petitioner is a charitable trust established in the year 1917 or thereabout. Late Mr. Narsingrao Shivaji Dharmaji settled a sum of Rs.80,000/- upon the trust for carrying out charitable objects like rehabilitation of visibly impaired persons in the society. After the enactment of the Bombay Public Trust Act, 1950 (for short 'the BPT Act') the petitioner was registered as a public charitable trust. The petitioner is running a school for giving vocational training to the visually impaired persons. Since the year 1990 or thereabout, petitioner has been receiving grant from the government. The grant is sanctioned under the Government Physically Handicapped Special School Code (for short 'the Code') framed by the government in the year 1985. The respondent no.1 was appointed as a Superintendent in the school conducted by petitioner for giving vocational training to the visually impaired persons. (this school is hereinafter referred as 'the school'). Till the year 1990, salary to the employees of the school was paid by the petitioner from its own funds. Ever since the year 1990, the petitioner is claiming reimbursement of the

salary paid to the respondent no.1 as well as other employees of the school from the government.

3. On 15th July 1990, petitioner issued to the respondent no.1 a show cause notice for alleged misconducts committed by him on 2nd July 1998. The respondent no.1 replied the notice on 17th August 1998 admitting part of the misconduct viz. consumption of alcoholic drink but contended that consumption of alcohol arose out of addiction in nature of a disease for which he was taking treatment from a doctor. He therefore pleaded for mercy. He however did not admit the charge of misbehaviour allegedly committed by him under the influence of alcohol. In view of the denial of the charge of misbehaviour under the influence of alcohol, a charge-sheet was issued to the respondent no.1 on 6th September 1990, and an enquiry was held by appointing Mr.B.G. Kasbekar, Honorary Secretary of the petitioner, as the sole enquiry officer. The enquiry officer in his report dated 16th October 1998 found the petitioner guilty of both the misconducts. After a show cause notice, by an order dated 12th June 1999, the petitioner dismissed the respondent no.1 from service. The order of dismissal was challenged by the respondent no.1 by filing an appeal before the

Divisional Social Welfare Officer who confirmed the order of dismissal. Aggrieved respondent no.1 challenged the order of the Divisional Social Welfare Officer by filing a Writ Petition bearing W.P. No.2767 of 2001, in this Court. This Court held that the Divisional Social Welfare Officer had travelled beyond the articles of charge and held that the petitioner was guilty of other misconducts which were not subject matter of the disciplinary proceedings. This Court further held that principles of natural justice were not followed by the Divisional Social Welfare Officer hearing the appeal. In that view of the matter, the Court allowed the Writ Petition and remanded the appeal back for fresh hearing to the Divisional Social Welfare Officer. The Court did not adjudicate upon the contention of the petitioner that the appeal before the Divisional Social Welfare Officer was not maintainable but kept the issue open to be decided by him. After re-hearing by an order dated 30th April 2005, the Divisional Welfare Officer allowed the appeal holding that the enquiry conducted by the petitioner was not in accordance with the Code and hence bad in law. He held that under Rule 80 of the Code, enquiry was required to be conducted by a committee of three persons consisting of a nominee of

the management of the school, a nominee of the school committee and a nominee of the delinquent. Therefore, the enquiry conducted by a sole enquiry officer was not proper and not in accordance with the Code. He therefore allowed the appeal filed by the respondent no.1. However taking into consideration that first charge of consumption of the alcohol on the premises was already admitted by the respondent no.1, the Divisional Welfare Officer directed withholding of two increments from the wages of respondent no.1. That order is impugned in this petition.

4. Counsel for the petitioner firstly submitted that the Code was not applicable. He further submitted that assuming that the Code was applicable it was not enforceable at the instance of the respondent no.1. If there was any breach of the Code the government, at the most, could withhold the grant payable to the school but that was entirely a matter between the petitioner and the government. The respondent no.1 had no right to enforce the Code. The petitioner being a private school was not amenable to the writ jurisdiction of this Court and no writ could be issued against it. In support of these contentions, counsel referred to and relied upon the

decision of the Supreme Court in State of Assam Vs. Ajit Kumar Sarma, reported in AIR 1965 SC 1196 and decision of a Division Bench of this Court in Sohanlal Vs. Dy. Registrar. of Education, reported in 1975 Mh.L.J. Notes of cases, Note no.20.

5. In State of Assam Vs. Ajit Kumar Sharma (Supra) a constitution bench of the Supreme court held that the rules for grant-in aid by the Government to any school are in the nature of mere executives instructions and they confer no right on the teachers who cannot apply to the High Court for a mandamus against the State through the Director of Public Instruction for enforcement or non-enforcement of the rules. In Sohanlal Vs. Dy. Director in Education, a Division Bench of this Court held that the Secondary Schools Code is only in the nature of executive instructions issued by the State Government to the managements of school receiving grant-in-aid; a breach thereof would not confer any enforceable right on a third party like a teacher in a private school. Even if there is a breach of any of the rules contained in the Secondary School Code that would not confer on the teacher a right to get relief by a writ petition.

6. Untill the decision of the Supreme Court in Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust & ors. Vs. V.R. Rudani reported in AIR 1989 SC 1607, it was thought that a private schools were not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. The question whether a writ, including a writ of certorari, could be issued against a private school or a college came up for consideration before the Supreme court in Shri Anadi Mukta's case. Therein, there was some dispute between the University Area Teachers Association and the University regarding the implementation of certain pay scales. The dispute was referred to decision of the Chancellor of the University by agreement of the parties. The Chancellor held that the teachers were entitled to the revised pay scales. Instead of allowing the said pay scales, the petitioner trust running the college under the University decided to close down the college and terminated services of all the teachers in the college. The teachers did not challenge the termination but filed a Writ Petition in the High Court for issuance of a mandamus directing the management only to pay difference of salary in

accordance with the scale payable to them as per the U.G.C. scales in accordance with Government resolution. The management contested the writ petition on all conceivable grounds including that since it was a private college it was not amendable to the writ jurisdiction of the High Court. Rejecting all contentions of the management, the High Court allowed the Writ Petitions. That decision was challenged before the Supreme Court. Dismissing the appeal of the management, the Supreme Court held that if the rights between the parties were purely of private character and if the management of the college was purely of a private body with no public duty, mandamus would not lie. But where public money is paid as government aid that plays a major role in the control, maintenance and working of the educational institution. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Employment in such institutions is therefore not devoid of public character (see para 14 of the decision) The Supreme Court further held that Article 226 of the Constitution of India was a striking departure form the English Law and conferred

wide powers on the High Court to issue writs against public authorities. The words "any person or authority" used in Article 226 are not confined only the statutory authorities and institutionalities of the State and they may cover other persons or bodies performing public duty. The private colleges receiving Government aid perform public duties and are amenable to the writ jurisdiction of the High Court.

7. In Kobad Jehangir Bhende Vs. Farokh Sidhwa reported in 1990 Mh.L.J. 883, a Division Bench of this Court following decision of the Supreme Court in Anadi Mukta (Supra) has held that Madresa of Zorastrian Parsi Community, though created and existing for a section of the public - Zorastrian Parsi Community, in discharge of its duty owed a public duty and the High Court was competent to issue to it a writ under Article 226 of the Constitution of India. It further held that it was not just a private institution governed by private law, but being a recipient of a financial aid from the government, the institution had a public law character and was bound by the Secondary School Code which was the public law of the land.

8. In my view, the decision of the Constitution Bench of the Supreme Court in State of Assam Vs. Ajay Kumar Sharma (Supra) is distinguishable and is not applicable to the facts of the present case. In that case it was held that rules regarding grant-in aid were merely executive instructions and High Court cannot enforce them by issuing a writ of mandamus against the State through the Director of Public Instructions. In the present case, the respondent has not sought enforcement of the rules of grant-in aid through a writ of mandamus. The rules provide for an appeal to an officer of the State Government. The respondent filed an appeal before the State Government. The competent Officer of the State Government issued a direction to the petitioner to reinstate the respondent and impose a lesser penalty of withholding of two increments on the respondent. It was thus the State Government which enforced the rules of grant. The petitioner is bound to follow the orders issued by the Government at the peril of the stoppage of its grant. As between the petitioner and the State Government, the petitioner cannot pray for a certorari for quashing the orders of the State Government on the ground that the rules of grant are mere executive instructions and the Government, of its

own, cannot enforce them. Certainly, Government is entitled to enforce the rules of grant as a condition for the grant and petitioner cannot say that the Government should not enforce the said rules.

9. Counsel for the petitioner submitted that petitioner is not a special school as defined in the Code and therefore was not subject to the Code. Clause (viii) of Chapter I of the Code defines "Special School" as the school in which special education programmes are arranged, whether residential or non residential. Clause (vii) of Chapter I of the Code defines "Special Education" as formal or informal education directed at improvement or removal of disability, vocational education and education for enabling the disabled to perform his daily chorus or improve the social skills etc. An institution which imparts vocational training to the physically handicapped is thus regarded as a special school for the purpose of the Code. It is the case of the petitioner that it imparts vocational training to the visually impaired who are physically handicapped. Thus, in my view, the petitioner institution is covered by the definition of "special school" to which the Code applies. Even otherwise, it may be noted

that grant aid is allowed to the petitioner as a special school. The petitioner has been accepting the aid in the form of grant from the Government claiming itself to be a special school. In the circumstances, petitioner is estopped from contending that it is not a special school governed by the Code. Therefore, contention of the learned counsel that the Code does not apply to the petitioner has to be rejected.

10. Rule 80 of Chapter III of the Code lays down the manner of the Constituting committee for enquiry into misconduct of an employee covered by the Code. It requires formation of an enquiry committee of three members, first member to be nominated by the management, second to be nominated by the school committee and third to be nominated by the delinquent against whom the enquiry is to be held. In the present case, one man enquiry committee was constituted by the managing committee of the petitioner. The Divisional Welfare Officer hearing the appeal held that the enquiry committee was not properly constituted. The decision is correct and in accordance with the rules and cannot be faulted. The punishment issued by the petitioner on the respondent on the basis of an enquiry committee which was not

properly constituted cannot stand.

11. The contention of the petitioner that no appeal lies to the Divisional Welfare Officer is equally untenable. Rule 83 of Chapter III of the Code lays down the procedure for an appeal. It provides that the appeal must be signed by the applicant and if there are more than one person aggrieved, each aggrieved person must file a separate appeal. The appeal memo must be in Marathi language and appeal should be filed before the appellate Dy. Director (Now Divisional Welfare Officer). It is true that the Code does not specify which orders are appealable, but makes a provision for an appeal without specifying the orders which are appealable. Reading the Code as a whole, it appears that all orders passed by school managements imposing any punishment are appealable and the appeal lies to the Dy. Director, (now Social Welfare Officer) Any other interpretation would make rule no.83 of the Code otiose. It is worthy to note that rule 83 appears immediately after rules 80, 81 and 82 which relate to an enquiry and punishment. The context requires rule 83, which follows rules 80 to 82, to be interpreted as an appeal against the order of punishment passed under rule 82. If not so

interpreted it would mean an appeal against any and every order passed under the Code. Therefore, the contention of the petitioner that no appeal lies against an order of punishment imposed under rule 82 has to be rejected. Accordingly, I hold that the appeal was competent.

12. In my view, the appellate authority rightly came to the conclusion that the enquiry committee was not properly constituted. The punishment was imposed without following procedure laid down for holding an enquiry by the Code and cannot stand.

13. For these reasons there is no merit in the petition. Petition is accordingly dismissed.

14. At the request of the counsel for the petitioner, operation of this order is stayed for a period of four weeks.

D.G. KARNIK, J